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DECISION



21400 Martin
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-203766

DATE: April 5, 1982

MATTER OF: Madison-McAfee-Stull Transit Group

DIGEST:

1. As long as grantee's final award selection is rationally based and consistent with provisions of solicitation, final selection authority is not bound by recommendations made by evaluation group to which it had delegated responsibility for hearing oral presentations of offerors and evaluating their technical proposals.
2. Complaint that grantee improperly considered cost estimates and knowledge of local conditions which were not specified as evaluation criteria in solicitation is denied since such subcriteria are reasonably related to evaluation criteria which were specified.
3. Complaint from minority business enterprise contending that grantee failed to properly consider firm's minority status is denied since minority business participation was evaluated in accordance with evaluation criteria in solicitation.
4. Complaint challenging grantee's right to rescind decision to negotiate with joint venture which included complainant and revert to original decision to negotiate with another firm is denied because grantee reasonably believed that firms could not agree on joint venture arrangement and selection of original firm was reasonable.

Madison-McAfee-Stull Transit Group has filed a complaint against an award of a cost-plus-fixed-fee contract for architectural design services to Harry Weese & Associates by the Southern California Rapid Transit District (RTD) under a grant from the Urban Mass Transportation Administration (UMTA). Madison contends, among other things, that the District Transportation Board's resolution selecting Weese was arbitrary and an abuse of discretion because the Board rescinded a previous selection of a joint venture to be composed of Weese and Madison without stating reasons or giving Madison a chance to be heard. Madison further contends that the Board's evaluation improperly considered cost and knowledge of local conditions, neither of which was specifically listed in the solicitation as an evaluation criterion. For the reasons discussed below, Madison's complaint is denied.

The RFP set forth the following six evaluation criteria and their relative weights: qualifications of firm, 1.5; qualifications of staff, 3.5; completeness of response, 2.0; logic of work sequence, 0.5; management plan, 1.5; and minority/women business enterprise participation (participation 0.25; qualifications 0.75), 1.0. The solicitation also established a goal of 15 percent for minority business enterprise participation and 3 percent for women's business enterprise participation.

The evaluation of proposals was to be conducted in stages. The initial evaluation and ranking was to be conducted by a Consultant Evaluation Board (CEB), which in turn was to report its findings to the Rapid Transit Committee of the Board. The Committee was then to make a recommendation to the full Board, which was the final selection authority.

Five proposals were received and each offeror made an oral presentation to the CEB which then evaluated the technical proposals and the presentations. Weese, with a technical score of 92.4, and Madison, with a score of 73.0, were among the top three firms. The record shows that members of the CEB did discuss the cost estimates and the local knowledge of the firms during the rating process. These three firms also made oral presentations to the Committee. Two additional Board members attended as observers. After a conference with the CEB during which

reference was made to Madison's cost estimate as it related to that firm's understanding of the scope of work required, the Committee voted 3 to 2 to recommend to the full Board that award be made to Madison. Thereafter, the full Board did not follow the Committee's recommendation but voted 8 to 3 to make award to Weese. Of the 7 members who had heard the oral presentations, 4 voted for Weese. The record shows that there was no discussion of cost estimates or the knowledge of local conditions during the Board's evaluation.

On April 7, Madison protested the selection of Weese by the Board, contending that the award was not based on the evaluation criteria listed in the solicitation and questioning the Board's rejection of the Committee's recommendation. Subsequently, on May 28, the Board rescinded its previous resolution and voted 7 to 0 to direct that negotiations be undertaken with a joint venture of Madison and Weese. Apparently because Madison and Weese failed to reach agreement, the Board 2 weeks later voted 6 to 3, with 2 abstentions, to rescind its previous resolution directing negotiations with the joint venture and to return to its initial decision to make award to Weese.

Madison then filed a complaint with RTD, UMTA and our Office requesting that each, in turn, review the matter. RTD denied the complaint and UMTA found in an October 15 decision that RTD did not act arbitrarily or capriciously or in violation of the basic principles of Federal procurement in awarding the contract to Weese.

The grantor agency in administering its grants has the primary responsibility to review its grantee's procurement decisions to assure that grant requirements, including the requirement for competitive procurement, have been met. Hispano American Corporation--Reconsideration, B-200268.2, July 1, 1981, 81-2 CPD 1. We find that UMTA's concurrence with RTD's final award selection as set forth in its October 15 response to Madison's complaint was reasonable and that it has met its responsibility in overseeing compliance with its grant requirements.

The primary issues raised by Madison before our Office are identical to those raised before UMTA. They are (1) whether the Board acted properly in failing to accept the recommendation of its Committee to make award to Madison,

(2) whether the Board was improperly influenced by factors not included in the RFP's evaluation criteria, and (3) whether the Board acted properly in rescinding its resolution with respect to the joint venture and in returning to its decision to make award to Weese.

UMTA found no basis to question the Board's failure to follow the recommendation of its Committee and instead to select Weese. It discovered no local rule that required the Board to follow the Committee's recommendation and based on the fact that Weese was awarded a significantly higher technical score than Madison by the CEB, UMTA concluded that a reasonable basis existed for the Board's initial selection of Weese.

We have no reason to object to UMTA's conclusions regarding this issue. Madison has cited no authority, and we have found none, which would require the Board to accept the recommendation of the Committee. In fact, in a direct Federal procurement selection officials are not bound by the recommendations made by evaluation and advisory groups even though such groups may be composed of working level procurement officials and evaluation panel members who normally may be expected to have the technical expertise required for the technical evaluation of proposals. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD 325. Despite the Committee recommendations, it was clearly reasonable for the Board to choose Weese based on the higher technical score awarded that firm by the CEB.

Further, UMTA found that although cost estimates and knowledge of local conditions were not listed in the RFP as evaluation criteria, their consideration by the CEB or the Committee was not improper as both these elements were logically related to factors listed in the RFP. The cost estimates were, in UMTA's view, related to the completeness of the firm's response to the RFP, while knowledge of local conditions was related to the qualifications of the firm's staff. In addition, UMTA stated that even if cost estimates and knowledge of local conditions were improperly considered they were not controlling as the award selection was based on other factors. In this regard, UMTA notes that the reference to cost estimates and knowledge of local conditions was contained in a memorandum written by one of the CEB evaluators and that there was no evidence that these factors entered into actual point

scoring on the evaluators' scoring sheets as those sheets only listed the factors cited in the RFP. UMTA asserts that although these factors were discussed in the meeting between the CEB and the Committee, the Committee chose Madison, not Weese. Finally, UMTA notes that there is nothing in the minutes of the Board meeting or in the summary of the ratings of the three top firms given the Board which mentions cost or knowledge of local conditions. Consequently, UMTA found that the Board's decision to award the contract to Weese was properly based on factors listed in the RFP.

Again, we agree with UMTA. We have held that in direct Federal procurements once offerors are informed of the criteria against which their proposals will be evaluated, the agency must adhere to those criteria or inform all offerors of any significant changes made to the evaluation plan and give them an opportunity to structure their proposals with the new plan in mind. Telecommunications Management Corporation, 57 Comp. Gen. 251 (1978), 78-1 CPD 80. On the other hand, while agencies are required to identify major evaluation factors, they need not explicitly identify the various aspects of each which might be taken into account. All that is required is that those aspects not identified be logically and reasonably related to or encompassed by the stated evaluation factors. Buffalo Organization for Social and Technological Innovations, Inc., B-196279, February 7, 1980, 80-1 CPD 107.

Here, although cost and knowledge of local conditions were not specified as evaluation criteria, we think these factors could properly be considered in connection with the completeness of offerors' responses and qualifications of their staffs, which were specified as evaluation criteria. The solicitation stated that in the evaluation of the completeness of an offeror's response, consideration would be given to staff hours assigned to the various tasks. A significant portion of a firm's cost estimate was staff time. The solicitation also provided that in the evaluation of the qualifications of the firms and their staffs, consideration would be given to prior experience with similar work. Certainly, similar work in the same location would be a related consideration here. Moreover, as UMTA states, there is no indication in the record that such factors were presented by the Committee to the full Board or that they had any significant influence on the results.

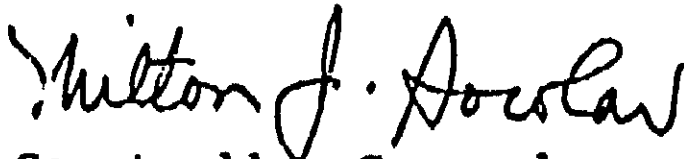
Madison complains that the Board arbitrarily reversed its May 28 rescission of its original selection of Weese in favor of negotiating with a joint venture composed of Weese and Madison. UMTA concluded that there appeared to be little basis for the Board's May 28 rescission, but stated that since the Board's original decision to negotiate with Weese was reasonable, its later (June 11) determination to return to that selection was also reasonable. Further, UMTA stated that it was unaware of any authority or rule which required the Board to provide Madison with a hearing or an opportunity to present its views prior to the Board's reversal of its May 28 rescission and its return to the original selection.

We think that on this point, as is the case with the previous issues, UMTA's decision was reasonable. The implementation of the Board's resolution to negotiate with the joint venture was clearly dependent upon there being an agreement between Weese and Madison to form such a venture. Although the parties were not given a great deal of time to reach an agreement, the record shows that at least the initial contacts between the firms did not indicate a likelihood of success. Thus, when Weese and Madison failed to reach agreement on this matter, the Board apparently concluded that such a venture was not practical and concluded that it could no longer pursue this approach. We think it was within its authority to revert to its initial decision to make award to Weese. See Paul F. Pugh and Associated Professional Engineers, B-198851, September 3, 1980, 80-2 CPD 171, where we held that a Federal agency need not continue a procurement after it discovered the information upon which the selection was based was inaccurate. We also have no basis to object to UMTA's conclusion that the Board was under no obligation to provide Madison a hearing or notice in regard to the reversal of the Board's selection.

Madison finally contends that it should have been selected because of its status as a minority business enterprise. The record shows that it received credit for its status in the CEB's initial evaluation and that the Board discussed Madison's minority status during its initial award selection debate. Because of the relatively low weight given the factor for minority/women business enterprise status in the RFP, this

element clearly could not determine the selection outcome unless Madison's scores under the other RFP evaluation factors were close to those received by Weese. It may be true, as Madison argues, that in certain instances minority status may be the determinative factor in an award selection. We certainly cannot say in this case, where the technical scores of the Weese and Madison (which of course, included credit for Madison's status) were not particularly close, that UMTA acted unreasonably in approving the Board's award to Weese despite Madison's minority status.

The complaint is denied.

for 
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of the United States



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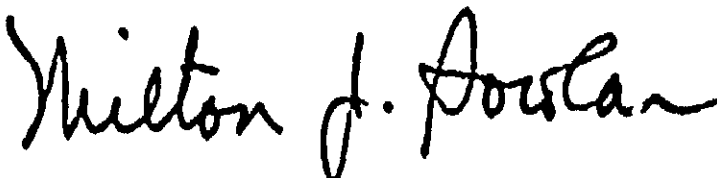
The Honorable Julian Dixon
House of Representatives

Dear Mr. Dixon:

We refer to your interest in the complaint of the Madison-McAfee-Stuart Transit Group which was filed with our Office in connection with a procurement for design services conducted by the Southern California Rapid Transit District under a grant from the Urban Mass Transportation Administration.

By decision of today, copy enclosed, we have denied the complaint.

Sincerely yours,

for 
Comptroller General
of the United States

Enclosure



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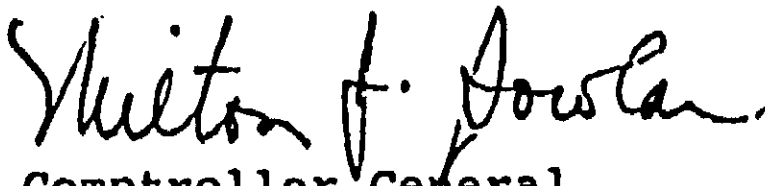
The Honorable Mervyn M. Dymally
House of Representatives

Dear Mr. Dymally:

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By decision of today, copy enclosed, we have denied the complaint.

Sincerely yours,

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Enclosure